

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ROYAL INDEMNITY COMPANY, §
as successor in interest to §
Globe Indemnity Company, §
§ Plaintiff, §
vs. § CIVIL ACTION NUMBER §
PEOPLES COMMUNITY BANK, § 2:05cv1127-F
INC.; LARRY PITCHFORD; §
JERRY GULLEDGE; HARRIS §
LEVESON; HARRIS PEST AND §
TERMITE CONTROL, INC., §
§ Defendants. §

MOTION TO DISMISS

Come now Defendants, Harris Leveson and Harris Pest & Termite Control, Inc., by and through their undersigned attorneys, and without waiver of any other defense to this action or claim against any party, move this Honorable Court to dismiss the complaint for declaratory judgment filed against them based on the following grounds:

1. This Court should exercise its substantial discretion and not entertain jurisdiction over this declaratory judgment action.
Wilton v. Seven Falls Co., 515 U.S. 277 (1995); Brillhart v. Excess Insurance Co. of America, 316 U.S. 491 (1942); Ameritas Variable Life Ins. Co. v. Roach, 411 F.3d 1328 (11th Cir. 2005); St. Paul Fire & Marine Insurance Co. v. Johnson Homes of Meridian, Inc.,

2005 WL 2739141 (Oct. 24, 2005, S.D. Ala); Life Insurance Co. of New York v. Adams, 972 F.Supp. 1386 (N.D. Ala. 1997); United States Fidelity & Guaranty Co. v. Algernon-Blair, Inc., 705 F.Supp. 1507 (M.D. Ala. 1988); Star Insurance Co. V. Elk Food Central, Inc., 2000 WL 1196155 (S.D. Ala. 2000).

2. The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, PREMISES CONSIDERED, Defendants Harris Leveson and Harris Pest & Termite Control, Inc., move this Court to dismiss this action in its entirety.

Respectfully submitted,

/s/ Ted Taylor
State Bar No. ASB-6435-L75E

/s/ Leah O. Taylor
State Bar No. ASB-9871-A57L

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this Motion to Dismiss so that service will be sent by the ECMF System via electronic mail to:

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on this the 27th day of December, 2005.

/s/ Leah O. Taylor
Of Counsel